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EXAMINER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/712,239
Filing Date: November 13, 2003
Appellant(s): CHHABRA ET AL.

Jay A. Krebs
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/17/2009 appealing from the Office action mailed 1/22/2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: Claims 1-11 are rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Smith et al. (US 3,616,157) and claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dorbin et al. (US 6,383,431 B1) in view of Smith (US 3,616,157) and Curro et al. (US 2002/0034912 A1).

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,383,431 B1	DORBIN et al.	5-2002
3,616,157 A	SMITH et al.	10-1971
2002/0034912 A1	CHURRO et al.	3-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

A. Claims 1-11 are rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Smith et al. (US 3,616,157).

i. Smith et al. disclose an embossed nonwoven wiper comprising a first un-deformed region **44** and **46** (Figure 9) and a second strained region **40** and **42** (col. 4, lines 23-35). Adhesive may be applied at the embossed regions to enhance the shape stability of the embossed fabric, thereby locking by a reinforcing means the embossed protrusion (col. 8, lines 3-10). The embossed article may comprise 25 weight percent or more of thermoplastic material (col. 7, lines 41-45). If desired, heavier compaction may be used to thermally bond the fibers at the points of embossment (col. 6, lines 44-48). The applied invention provides the claimed furrows and ridges (Figures 4, 7 and 8). The

claimed abrasivity of second region would necessarily be provided as applied invention meets the compositional and structural limitations. The applied invention may be used as a wet wipe as additional moisture at rates of 60 weight percent or more may be added prior to the invention's packaging (col. 7, lines 4-10). The applied reference may comprise additional layers to form a laminate (Examples).

ii. Although Smith does not explicitly teach the claimed features of retaining its thickness when wet or having a thickness that is at least about 30% greater than the thickness of a wet textured wet wipe which does not include protruding elements, it is reasonable to presume that the claimed wet thickness retention and having a thickness that is at least about 30% greater than the thickness of a wet textured wet wipe which does not include protruding elements are inherent to the invention of Smith. Support for said presumption is found in the use of like materials (i.e. nonwoven of claimed structure). The burden is upon Appellant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of retaining its thickness when wet or having a thickness that is at least about 30% greater than the thickness of a wet textured wet wipe which does not include protruding elements would obviously have been present one the Smith et al. product is provided.

Claim Rejections - 35 USC § 103

B. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dorbin et al. (US 6,383,431 B1) in view of Smith (US 3,616,157) and Curro et al. (US 2002/0034912 A1).

i. Dorbin et al. disclose a method for modifying the physical characteristics of a nonwoven fibrous web, which involves passing the web between at least one pair of inter-engaged rolls to incrementally stretch the web, and then withdrawing the incrementally stretched web from between the rolls under tension. (Abstract) The reference relates to disposable absorbent articles. The reference teaches a nonwoven material with a deformation pattern in the form of ridges and grooves defining an array of spaced, diamond-shaped elements **100** with intervening *un-deformed* areas **102** which provide the claimed surface plane of the substrate. (Col. 12, lines 2-24; Figures 9-11). Figures 10 and 11 show the patterns of the forming rolls that are transferred into the nonwoven web. It is the Examiner's interpretation that that first and second regions of the present invention are provided by the Dobrin reference. (Refer to Figures 10 and 11). Appellant is directed to the figures of Dorbin et al. and those of the instant application as they comprise similar apparatuses and formed nonwovens. The nonwoven article of Dorbin et al. may comprise at least 20% thermoplastic material as the article may consist of polyethylene fibers (col. 7, lines 22-28) and may be laminated to other sheets to form a laminate (col. 2, lines 5-10). The reference shows in its examples nonwoven materials with basis weight ranging from 27-33 gsm and it teaches structures that comprise carded webs, spun bonded webs, SMS, among others (Refer to Table I and Cols. 14-18). Dorbin '431 teaches that the preferred fibrous nonwoven web material can have an initial thickness of from about 5 mils to about 40 mils [0.1270-1.0160 mm]. (Refer to Col. 7, lines 29-30) Further, the reference teaches that the modified web thickness is from about 85% to about 400% of the initial web thickness (caliper). (Refer to Col. 3, lines 47-48).

ii. Dorbin is silent as to the locking of the protruding elements in the second region by the reinforcing means of the present invention, but does teach that the fibers of the nonwoven fibrous web may be bonded to each other through thermal or adhesive bonding (col. 6, lines 60-67).

iii. Smith is directed to an embossed nonwoven fabric having a textured character and fabric-like qualities of softness and had and suitable for wiping surfaces having aqueous liquids. (Abstract) Figure 4, shows a configuration in which the embossed nonwoven fabric **26** is used for wiping or cleaning purposes and areas **22** (similar to the second portions of the present invention) are reinforced by thermal bonding. (Refer to Col. 3, lines 31-45). Moisture may be applied to the wiper of Smith at levels of up to 60 percent or more based upon the dry wiper weight when desired (col. 7, lines 5-10). Smith also teaches the application of adhesive preferably only at the sites of embossment to enhance the shape-stability of the embossed nonwoven fabric (col. 8, lines 3-11).

iv. Since both references are directed to nonwoven materials useful in the production of disposable absorbent materials the purpose disclosed by Smith would have been recognized in the pertinent art of Dorbin et al.

v. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the second portions of Dorbin et al. with either adhesive for bonding or thermal bonding with the motivation of enhancing the shape-stability of the embossed nonwoven fabric (col. 8, lines 3-11, Smith).

vi. Although Smith and Dorbin et al. do not explicitly teach the claimed features of retaining their thickness when wet or having a thickness that is at least about 30% greater

than the thickness of a wet textured wet wipe which does not include protruding elements, it is reasonable to presume that the claimed wet thickness retention and having a thickness that is at least about 30% greater than the thickness of a wet textured wet wipe which does not include protruding elements are inherent to the combination of Smith and Dorbin. Support for said presumption is found in the use of like materials (i.e. nonwoven of claimed structure). The burden is upon Appellant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed properties of claimed wet thickness retention and having a thickness that is at least about 30% greater than the thickness of a wet textured wet wipe which does not include protruding elements would obviously have been present once the combined product of Smith and Dorbin is provided. The second region of the combination of Dorbin et al. and Smith would necessarily provide abrasivity as it would comprise a materially identical article to that of Appellant.

vii. Curro et al. disclose a laminate of nonwoven webs that is capable of multiple uses such as in personal absorbent articles and wet wipes [0010]. Dorbin et al. discloses the claimed nonwoven laminate except that it is used in personal absorbent articles instead of as a wet wipe, Curro et al. show that laminates of nonwoven webs may be used personal absorbent articles as well as wet wipes. Therefore, because laminates of nonwoven webs were used in both personal absorbent articles as well as wet wipes at the time the invention was made, one of ordinary skill in the art would have found it obvious to have used the invention of Dorbin et al. as a wet wipe.

(10) Response to Argument

A. Appellant argues that fibrous portions **28** and **30** of Smith are slanted and angularly oriented and as such they are not un-deformed. Appellant is directed to Figure 3 which illustrates the process of forming the article of Figure 4. The compacted areas **14**, **16**, **18**, **20**, **22**, **24** have been clearly de-formed. The areas between said deformed areas have not been acted upon and as such have not been deformed. Therefore, these intermediate areas provide for the claimed un-deformed region. In paragraph 0042 of Appellant's published application the "un-deformed region" is defined by areas of the substrate that are located within grooved regions **408** of plate **402** and teeth **403** on plate **401** in Figure 4. Examiner has applied the same standard to describe the un-deformed regions of Smith.

B. Appellant argues that the second regions of the claimed invention comprise strained protruding elements extending beyond a surface plane of the substrate which are capable of greater geometric deformation than the first regions and embossed regions of Smith lie in planes of substantially parallel top and bottom surfaces of a nonwoven fabric. Appellant continues to state that the compacted areas of Smith are compressed as opposed to being strained as claimed and do not protrude beyond a plane of the substrate locked by reinforcement means. Appellant is directed to Figures 9 and 11, which clearly show that the fibers of the nonwoven web are being strained at points **40**, **42** and **68** as the fibers are being pulled between adjacent teeth of the forming apparatus. The final article is illustrated in Figures 7 and 9 that show that the strained areas extend beyond the plane of the substrate and the strained areas may be reinforced with adhesive. The application of adhesive to these protrusions would necessarily provide the nonwoven with additional resistance to deformation caused by external forces. Furthermore, the

limitation of the protrusions being capable of greater geometric deformation than the first regions is not currently claimed. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

C. Appellant argues that even though the strained regions of Smith may include reinforcing resin they cannot be construed as the locked protruding elements as claimed because the unembossed, uncompacted regions lie between these strained regions and hingedly connect the strained regions. For examination purposes, the depressed embossment **40** may serve as the surface plane and the elevated embossment **42** may serve as the claimed protruding element with the first, undeformed region **44** being present in between embossments. The elevated embossment is "locked" in that the reinforcing resin "locks" the protruding regions and the protrusions are further supported by the un-deformed region. The adhesive serves as the locking means.

D. Appellant argues that one of ordinary skill in the art would know that attaching the nonwoven of Dorbin to a film restrains the nonwoven in the x-y plane and as such does not require reinforcement means to lock the protruding elements as claimed. The nonwoven of Dorbin can, ***if desired***, be joined with other materials (col. 5, lines 28-34). This is not a required step. The film set forth in Dorbin would provide some stability to the nonwoven layer, but in order to bond the two layers together Dorbin suggests the use of adhesive to laminate the two layers form a composite article (col. 32, lines 40-65). Furthermore, the purpose of the film layer is to provide the nonwoven with fluid impermeability, while retaining the breathability of the nonwoven layer, not to stabilize the nonwoven layer's structure. The application of adhesive

resin at the embossed regions allows the nonwoven fabric of Smith to maintain a textured character and fabric like qualities of softness and hand (abstract).

E. Appellant argues that the combination of Dorbin and Smith does not result in the claimed invention in that the compacted areas of Smith are compressed as opposed to being strained like the second regions of the nonwoven as claimed. In combining Dorbin and Smith Examiner has not relied upon Smith to provide the claimed structure with the strained and un-deformed regions. Examiner has only relied upon Smith to teach the locking of the protrusions of the second, strained region. Examiner has relied upon Dorbin to provide the structure of the nonwoven fibrous web and Appellant has acknowledged that Dorbin uses a texturing method that includes incremental stretching similar to that described by the present invention that produces similar protruding elements.

F. Appellant argues that Smith teaches that the compacted areas form a pattern of intermittently spaced, hingedly connected. Again, in applying the combination of Dorbin and Smith Examiner has only relied upon Smith to teach the locking of the protrusions of the second, strained region.

G. Appellant argues that the combination of Dorbin, Smith and Curro does not provide for the claimed invention. Examiner has clearly established that the applied art does in fact render the claimed invention unpatentable.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Matthew D Matzek/

Examiner, Art Unit 1794

Conferees:

/D. Lawrence Tarazano/

Supervisory Patent Examiner, Art Unit 1794

/Anthony McFarlane/